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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,132	03/30/2001	Gerhard W. Gross	PW 027 5026 P10879	6849
27496	7590	10/14/2004	EXAMINER	
PILLSBURY WINTHROP LLP 725 S. FIGUEROA STREET SUITE 2800 LOS ANGELES, CA 90017			TANG, KAREN C	
			ART UNIT	PAPER NUMBER
			2662	

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/823,132

Applicant(s)

GROSS, GERHARD W.

Examiner

Karen C Tang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

I. Claim 1-3, 12, 14, 17-19, 29, 30, 31, 40, and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Aoki et al. hereinafter Aoki (US 6,575,255 B1).

1. Referring to Claim 1, 17 and 30 Aoki discloses:

sending a plurality of packet profiles (Examiner interprets the packet profiles from the application as the TCP communication information from the prior art.) from a plurality of source nodes to a plurality of destination nodes via links, each link connecting a source node with a destination node, each link including the test segment (Examiner interprets the test segments as the log information of the TCP packets) refer to Fig 1, Col 6, Line 15-25, 62- 67, and Col 7, Lines 1-10.

manipulating start times for sending the plurality packet profiles, or a portion thereof, from the plurality of source nodes. or a portion thereof, so that the plurality of packet profiles flow through the test segment essentially simultaneously. Examiner interprets the manipulating start time as multiple clients sending information through a synchronous network in which despite the time the information is transferred, the packets profiles will be sent out simultaneously refer to Fig 4, Col 2, Lines 65-67, Col 3, Lines 1-56, Col 7, Lines 10-25, Col 10, Line 37-52.

receiving the plurality of packet profiles at the plurality of destination nodes, wherein each of the packet profiles comprises a plurality of packets (TCP communication data, and byte count measurements (packet size and packet category, and segment sizes) and time stamps (Transmitting and Receiving time) are made at the plurality of destination nodes refer to Fig 7, Col 6, Line 25- 67, Col 7, Line 1-10.

2. Referring to Claim 12, 14, 40 and 42 Aoki discloses:

sending a packet burst from a source node to a destination node via a link the link including at least the test segment refer to Fig 1, and Col 6, Line 15 - 67.

receiving the packet burst at destination node, the packet burst comprising a plurality of packets, wherein a first time stamp TS_{first} Of the first packet of the packet

$$Rate(bps) = \frac{Bytes_{total} * 8}{TS_{last} - TS_{first}}$$

burst, a last time stamp TS_{last} Of the last packet of the packet burst and a byte count measurement measuring the bytes $Bytes_{total}$ in the packet burst are made at the destination node, the bandwidth capacity of the test segment in bit per second being calculated using an expression,

refer to Col 8 Line 45 – 60, the only Bytes is 8 times the bites, thus in this case, $BW = \text{Rate}(\text{Bytes per second})$, $\text{Bytes} = \text{Bites} * 8$, and the $RTT = T_{\text{slast}} - T_{\text{sfirst}}$.

3. Referring to Claim 2 and 18 Aoki stated,

a central server (Examiner interprets a central server as a communication device which can transmit information via communication subnetwork) is utilized to command the plurality of source nodes to send the plurality of packet profile at specific times, including the manipulation of the start times for the plurality of packet profiles refer to Col 6, Lines 1-68, Col 10, Line 37-52.

4. Referring to Claim 29, Aoki discloses wherein the nodes are added as software modules to existing end hosts or network devices refer to Col 6, Line 33-45.

5. Referring to Claim 3 and 19, and 31, Aoki discloses wherein the network is a time synchronized network and each of the plurality of packet profile is a packet burst refer to Col 6, Line 34-37, Col 7, and Line 10-25.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

II. Claims 4-6, 13, 15, 16, 20-22, 32-34, 41, 43 and 44 are rejected under 35 U.S.C. 103(a) as being anticipated by Aoki et al. hereinafter Aoki (US 6,575,255 B1) in view of "Communication System An Introduction to Signals and Noise in Electrical Communication" by Carlson et al. hereinafter Carlson.

1. Referring to Claim 4, 13, 20, 32, and 41, Aoki does not expressly disclose

related to the Degree of Desynchronization (DoD) by an expression, $L = \frac{DoD}{ErrLim}$, where ErrLim represents a maximum desired error in the segment bandwidth capacity determination.

However, Carlson discloses :

related to the Degree of Desynchronization (DoD) by an expression, $L = \frac{DoD}{ErrLim}$, where ErrLim represents a maximum desired error in the segment bandwidth capacity determination.

Refer to Chapter 5.2, Page 201. Line 15-20 Equation 3.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to have combine Carlson and Aoki idea because it is important to

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find out under what requirement can the transmission Bandwidth still be operational so that the links can transmit data without overloading.

2. Referring to Claims 5, 21, and 33 Aoki stated:

wherein the time stamps made at each of the plurality of destination nodes are a first time stamp T_{ssrst} of the first packet of the packet burst received from each corresponding source node and a last time stamp T_{slast} of the last packet of the packet burst received from each corresponding source node, and the byte count measurements measure the bytes $Byte_{stotal}$ in each of the packet bursts received at each corresponding destination node refer to Col 1, Line 25-35, and Col 7, Line 25-40.

3. Referring to Claims 6, 22, and 34, Aoki discloses that, wherein an individual flow rate in bit per second due to each packet burst is calculated using an expression,

And a total flow rate through the test segment is the sum of all individual flow

$$Rate(bps) = \frac{Byte_{stotal} * 8}{TS_{last} - TS_{first}}$$

rates refer to Col 7, Line 25-40, and Col 8, Line 45 – 60.

4. Referring to Claims 15 and 43 Aoki does not expressly discloses wherein the length L_{single} of the packet stream is greater than or equal to $(2 * T) + 2s$, where epsilon is used to compensate for small timing error.

Carlson discloses:

wherein the length L_{single} of the packet stream is greater than or equal to $(2 * T) + 2s$, where epsilon is used to compensate for small timing error. Refer to Chapter 5.2 Page 201, Line 1-6.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to have combine Carlson and Aoki idea because it is important to find out under what requirement can the transmission Bandwidth still be operational so that the links can transmit data without overloading.

5. Referring to Claim 16 and 44, Aoki does not disclose wherein the length L_{single} of the packet stream is greater than or equal to $T + 2s$, where epsilon is used to compensate for small timing error refer to Chapter 5.2, Page 202 Equation 7b.

Carlson does disclose wherein the length L_{single} of the packet stream is greater than or equal to $T + 2s$, where epsilon is used to compensate for small timing error refer to Chapter 5.2, Page 202 Equation 7b.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to have combine Carlson and Aoki idea because the above equation is the variation of the previous equation, and it is simply differ due to the phase modulation.

III. Claims 7, 11, 23, 27, 28, 35, 39, and 45-47 are rejected under 35 U.S.C. 103(a) as being anticipated by Aoki et al. hereinafter Aoki (US 6,575,255 B1) in view of "Communication Networks Fundamental Concepts and Key Architectures" by Garcia et al. hereinafter Garcia.

1. Referring to Claim 7, 23, and 35, Aoki discloses each of the plurality of packet profiles is a packet stream, and a plurality of byte count measurements are made over a time measurement period T at each of the plurality of destination nodes refer to Col 6, Line 34-40, and Col 22, Line 10-15.

Aoki does not expressly disclose the network is asynchronous network.

Garcia discloses the network is asynchronous network refer to Chapter 7, Page 530, Fourth Paragraph.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to have combine Garcia's and Aoki idea because by applying the method to both synchronous and asynchronous network, the sources node has more control over the packets transmission.

2. Referring to Claim 28, Aoki discloses wherein the nodes are distributed at the edges of the network and exist in stand-alone boxes. It is known that within the network it has units/nodes around the edges and the nodes can be stand along refer to Col 6, Line 10-40.

3. Referring to Claim 11, 27, and 39, Aoki does not expressly disclose that the network bandwidth of a link capacity is determined by the link which has a maximum throughput of the slowest segment in the link.

Garcia discloses that the network bandwidth of a link capacity is determined by the link which has a maximum throughput of the slowest segment in the link refer to Chapter 7, Page 528, Second Paragraph.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to have combine Garcia's and Aoki idea because it can prevent the link from overloaded when they have to cope with too many packets in the streams. Thus by determine the network bandwidth of a link capacity by determine the links'

maximum throughput of the slowest segments can keep the network resources utilized of all time.

4. Referring to Claims 45, 46, and 47, Aoki does not expressly disclose that if at least two of the plurality of sources nodes added up and equal to the maximum throughput of the slowest segment of the link, then the packets of which they are transmitting can be sent through the link to the same destination node

Garcia discloses that if at least two of the plurality of sources nodes added up and equal to the maximum throughput of the slowest segment of the link, then the packets of which they are transmitting can be sent through the link to the same destination node refer to Chapter 7, Page 528, Second Paragraph.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to have combine Garcia's and Aoki idea because when the sources are aggressive and sent numerous packets at the same time, as long as the sources nodes added up its packets capacities and does equal or to the maximum throughput of the slowest segment of the link, it can prevent the network from overloading.

IV. Claims 8-10, 24-26, and 36-38 are rejected under 35 U.S.C. 103(a) as being anticipated by Aoki et al. hereinafter Aoki (US 6,575,255 B1) in view of "Communication Networks Fundamental Concepts and Key Architectures" by Garcia et al. hereinafter Garcia in further view of "Communication System An Introduction to Signals and Noise in Electrical Communication" by Carlson et al. hereinafter Carlson .

1. Referring to Claims 8, 24 and 36, Aoki does not disclose the Degree of Desynchronization (DoD) by an expression, $L_{multiple} = (4 * T) + 2E$, where the time measurement period T is one half of DOD and epsilon s is used to compensate for small timing errors.

Carlson discloses the Degree of Desynchronization (DoD) by an expression, $L_{multiple} = (4 * T) + 2E$, where the time measurement period T is one half of DOD and epsilon s is used to compensate for small timing errors refer to Chapter 5.2 Page 201, Line 1-6.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to have combine Carlson and Aoki idea because the above equation is a variation of the L_{single} since it is only different from the amplitude modulation.

2. Referring to Claim 9, 25 and 37 Aoki discloses that wherein the time stamps made at each of the plurality of destination nodes are a plurality of time measurements MT_n , where n is an integer, each time measurements ML being separated by the time measurement period T and each measuring byte count over the period T since last time measurement MT_{n-1} in each of the packet streams received at each corresponding destination node, refer to Col 7, Line 25-40, Col 6, Line 35-40 and Col 22, Line 10-15.

3. Referring to Claims 10, 26, and 38, Aoki discloses that, wherein an individual flow rate in bit per second due to each packet burst is calculated using an expression,

And a total flow rate through the test segment is the sum of all individual flow

$$Rate(bps) = \frac{Bytes_{total} * 8}{TS_{last} - TS_{first}}$$

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rates refer to Col 7, Line 25-40, and Col 8, Line 45 – 60.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US 5,931,961 (Ranganathan et al discloses of an acceptable packet size using ICMP ECHO)
- US 5,963,540 (Bhaskaran discloses a router pooling in a network flowswitch)
- US 6,754,622 (Beser et al discloses a method for network address table maintenance in a data-over-cable system using destination reachability)


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen C Tang whose telephone number is (571)272-3116. The examiner can normally be reached on M-F 7 - 3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on (571)272-3088. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KT



JOHN PEZZLO
PRIMARY EXAMINER